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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 002793

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TREASURY PASS TO FINCEN

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SUBJECT: NEW FINANCIAL CRIMES COMMISSION TO TAKE ON  
TERRORISM

1.(U) Classified by Timothy D. Andrews, Charge' d'affaires  
for reasons 1.5 (b) and (d).

2.(C) Summary: On the eve of President Obasanjo's November 2 visit to Washington, the GON added terrorism to the tasks of a planned Financial Crimes Commission (FCC). The draft law establishing the FCC gives it sweeping powers to control and coordinate disparate GON agencies' efforts to fight money laundering, financial crimes and terrorism, as well as to investigate and prosecute offenders. Not surprisingly, given the Ministry of Justice's role in drafting the legislation, the Attorney General would play a key role in controlling the new Commission. The addition of terrorism to the FCC's mandate seems artificial and contrived. It was probably done as a symbol of political commitment to anti-terror efforts.  
End Summary

3.(C) RNLEO October 31 obtained a copy of the GON's draft law creating a "Financial Crimes Commission." (copies will be hand carried to Washington prior to the November 9 bilateral law enforcement committee meeting). This draft is the product of several months of work by the Attorney General's staff and until recently the document did not contemplate the FCC being the leads anti-terrorism agency. On October 29, however, the Presidency reportedly directed that the draft law be amended to incorporate anti-terrorism efforts. Changes were quickly made -- a "rush job" confided an official in the National Security Advisor's office. The law now creates the "Terrorism, Economic and Financial Crimes Enforcement Commission" (TEFCEC).

#### The Commission Players

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4.(SBU) The draft law provides for a Commission headed by a Chairman who "shall be a serving or retired member of any government security or law enforcement agency" appointed by the President for a term of four years. Members of the Commission will include representatives of the following agencies: the Ministry of Justice; the Nigerian Police Force; the National Intelligence Agency; the State Security Service; Nigerian Telecommunications; the Nigerian Postal Service; and the Central Bank of Nigeria. (Comment: Though not cited, the National Drug Law Enforcement Agency is part of the Ministry of Justice. End Comment) In addition, "four eminent Nigerians" with experience in finance, banking or accounting will serve as members of the Commission. The draft legislation calls for staffing of the Commission with officers seconded from government security or law enforcement agencies. Within the Commission will be four units: general and assets investigations; legal and prosecution; research; and administration.

#### Commission's Investigative Functions

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5.(SBU) According to the draft law, the TEFCEC will be responsible for "the investigation of all serious financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc. of and above the value of naira 5,000,000 or its equivalent." (approximately USD 44,000) The TEFCEC is charged with enforcing the following existing laws: a) the Money Laundering Act of 1995; b) the Advance Fee fraud and Other Related Offences Act of 1995; c) the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act of 1994; d) the Banks and Other Financial Institutions Act of 1991; and e) any other law or regulations relating to terrorism, economic or financial crimes.

6.(SBU) Also cited is a specific responsibility to adopt "measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorism, economic and financial crime related offences or the properties the value of which corresponds to such proceeds. Similar to powers granted in existing laws, the Commission can forfeit seized assets, but usually only upon conviction. A new tool granted to the TEFCEC is a Declaration of Assets Form that must be completed by any person arrested for committing an offence under the TEFCEC act. On this form, the person must disclose all assets and properties and the form is then forwarded to the investigations unit of the Commission for full investigation. These assets are then subject to an interim forfeiture order (seizure). The failure to fully disclose assets and properties on the form is a crime subject to up to ten years imprisonment, according to the draft TEFCEC law.

#### Coordination Role of Commission

7.(SBU) The draft law stipulates that the TEFCEC will be responsible for "collaborating with government bodies both within and outside Nigeria." Also, "taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to terrorism, economic and financial crimes, in consultation with the Attorney General of the Federation; the coordination of all existing terrorism, economic and financial crimes investigating units in Nigeria; maintaining a liaison with the office of the Attorney General of the Federation, the Nigerian Customs Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions in the eradication of economic and financial crimes."

8.(C) Comment: While we leave thorough analysis of the draft legislation to legal experts in Washington, the financial crimes portion seems to reflect some thought and study on both the structure of the Commission and its designation of investigative and prosecutorial powers. Moreover, it seems to address the major concerns of the FATF and international community in improving centralized control and coordination of GON-wide anti-money laundering efforts and in creating an entity to respond to international requests for information. The sudden addition of terrorism to the Commission's mandate, is ill-fitting. In presenting RNLEO with a copy of the revised draft, the Legal Assistant to the National Security Advisor commented that in their haste to amend the draft law to cover terrorism-related crimes, the drafters appear to have slapped the term "terrorism" into the draft text repeatedly without defining it or terrorist crimes as has been done in the draft with financial crimes. This seems to be a major legal flaw. This addition is probably intended to symbolize the GON's commitment to anti-terrorism efforts.

Andrews